

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KYLE DOUGLAS MCCLOUD,
JOHNATHAN ANDREW SMITH, and RACHEL
DIANE SMITH, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LARRY DEAN LITTLE,

Respondent-Appellant.

UNPUBLISHED

August 21, 2007

No. 275161

Oakland Circuit Court

Family Division

LC No. 03-684287-NA

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROBIN ILENE LITTLE,

Respondent-Appellant.

No. 275162

Oakland Circuit Court

Family Division

LC No. 03-684287-NA

Before: Davis, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

The parents appeal as of right an order terminating the mother's parental rights as to Kyle Douglas McCloud,¹ Johnathan Andrew Smith, and Rachel Diane Smith; and the father's parental rights as to Johnathan and Rachel. We affirm.

¹ Kyle was not the child of respondent father. We do not address any issues regarding Kyle in this appeal, because Kyle is now over the age of eighteen and, in any event, he had apparently not been in respondent mother's care for several years prior to any of the events in this matter.

The instant matter arose on June 29, 2006, when police were summoned to the parents' residence by respondent mother's mother. The police arrived to find the house dirty, unkempt, littered with empty beer cans, and without running water. They found respondent mother incoherent and in what she later admitted was "some sort of medicated daze." She was taken to a psychiatric hospital, where she indicated that Larry was violent and neglectful, beat the children with sticks, and had raped her the night before.² She also stated that she had kicked her son and was no longer able to take care of the children because she was contemplating drowning them. Meanwhile, respondent father worked approximately twelve hours a day, six days a week, as a truck driver. The children were generally left in respondent mother's care, although respondent mother's mother, who lived nearby, frequently helped. Police had been summoned to the residence three months previously, at which time Robin had been arrested for domestic assault.

The evidence in this case showed that respondent mother had an extensive and ongoing history of severe mental health problems, including numerous psychiatric hospitalizations and repeated failures to comply with treatment or services. Both parties had a history of marijuana use, and respondent mother had a history of alcohol use and failing to take her medications. Respondent father worked, and he had previously had children from prior relationships taken away for neglect. Respondent mother's mental health problems included homicidal and suicidal ideations involving the children, hallucinations and delusions, and uncontrolled emotional outbursts. Respondent father was aware of respondent mother's problems, and although he frequently exhorted her to take her medications and refrain from drinking, his admonitions had little effect, and the evidence suggested that he purchased marijuana for her. Respondent father looked into daycare programs, but found none of them suitable; the children were therefore left in respondent mother's care, notwithstanding her problems. Respondent father's preferred discipline involved striking the children with a stick, although the evidence was unclear how much of this discipline actually took place. The parents underwent psychiatric evaluations showing them both to have poor insight and to be unlikely to change.

The trial court concluded that the similarities between this matter and a prior petition in 2003, also involving a mental breakdown by respondent mother, were too great to ignore. Equally importantly, the parties' apparent inability to change their ways permanently posed too great a danger to the children. It found that MCL 712A.19b(3)(b)(i) and (ii), under which a parent caused or failed to prevent injury or abuse and there is a reasonable likelihood that the child will be harmed in the future if placed with the parent, had been established. It also found MCL 712A.19b(3)(g) and (j), under which a parent fails to provide proper care and likely will not be able to do so within a reasonable time, and there is a reasonable likelihood that the child will be harmed if returned to the parent, to be "the most clearly proven subsections in this petition." The trial court held a separate best interests hearing, and concluded that statutory grounds for termination were established by clear and convincing evidence, and it was not clearly against the children's best interests for the parents' parental rights to be terminated. Both parents now appeal.

² Respondent mother retracted the rape accusation during her testimony at trial.

Termination of parental rights requires the petitioner to establish at least one of the statutory grounds for termination enumerated in MCL 712A.19b(3). *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). Due process requires the evidence to be clear and convincing. *Santosky v Kramer*, 455 US 745, 767; 102 S Ct 1388; 71 L Ed2d 599 (1982). However, only one ground for termination need be found. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). If a statutory ground is established, the trial court is required to terminate the parent's rights unless the record as a whole clearly shows that termination is not in the child's best interests. *In re JK, supra* at 211. Whether a ground for termination has been sufficiently proven and whether the decision to terminate is in the child's best interests are both reviewed for clear error. *Id.*, 209; MCR 3.977(J). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). This Court will not disturb a lower court's order in any event unless "failure to do so would be inconsistent with substantial justice." *In re TC*, 251 Mich App 368, 370-371; 650 NW2d 698 (2002), citing MCR 2.613(A).

Respondent father first argues that the trial court erred in adjourning the preliminary hearing because there was no good cause to do so. We disagree.

A preliminary hearing must commence within 24 hours of a child being taken into protective custody, "unless adjourned for good cause shown, or the child must be released." MCR 3.965(A)(1). This Court has defined "good cause" as being, in the absence of any other statutorily provided definition, as "'a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.'" *Franchise Mgt Unlimited, Inc v America's Favorite Chicken*, 221 Mich App 239, 246; 561 NW2d 123 (1997). There was no objection to the first adjournment. At the second adjournment, the trial court noted that it was disturbed by the prosecution's repeated failure to have a petition ready. However, the trial court concluded that the severity of respondent mother's mental problems and her current psychiatric hospitalization, respondent father's work schedule, and the parents' prior histories, when viewed together, strongly suggested that the children would be in danger of harm if the matter was not adjourned. Contrary to respondent father's assertion, it appears to us that the trial court completely disregarded the prosecution's proffered excuses, granting adjournment "to ensure as best I can the safety of the children" instead. We find no clear error in the trial court's findings, on the basis of the facts known at the time, that the children would be in danger if released and that protecting them constituted "good cause."

The parents next argue that the trial court erred in finding any of the statutory grounds for termination to have been established. We disagree.

Under MCL 712A.19b(3)(b)(i) and (ii), "the FIA must show that a parent 'caused the physical injury or physical or sexual abuse' to the children, or that a parent 'had the opportunity to prevent' such injury or abuse and failed to do so." *In re Sours*, 459 Mich 624, 634; 593 NW2d 520 (1999). "Furthermore, there must be a 'reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.'" *Id.* The trial court found these sections satisfied on the basis of father's admitted striking of the children with a stick, mother's admitted kicking of Johnathan, and a police officer's report that mother had admitted beating the children. The trial court specifically observed that it deemed father's testimony to be of low credibility in "minimizing" father's use of the stick. The evidence also

showed that mother was highly susceptible to uncontrollable emotional outbursts of the sort that resulted in the kicking incident, that father was highly disinclined even to consider alternative discipline styles, and that father was mostly absent from the home while mother was virtually catatonic. The gravamen of the evaluation of both parents was that neither one was ever likely to change. The fact of physical injury was established by clear and convincing evidence; the failure of both parents to prevent harm to the children at the hands of the other parent was established by clear and convincing evidence, and the overwhelming likelihood is that if the children were returned, the same story would play out yet again, with essentially the same results. The trial court did not commit clear error in finding statutory bases for termination as to both parents satisfied under MCL 712A.19b(3)(b)(i) and (ii).

Under MCL 712A.19b(3)(g) and (j), respectively, “the parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age” and “there is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.” The evidence showed that father simply worked too many hours a week to be a primary caregiver for the children, and daycare was apparently not a realistic option. The evidence also showed that mother’s mental and substance abuse problems were severe and debilitating, and even father’s threats of divorce were ineffective at keeping mother on her medications and off the alcohol. Even with the part-time assistance of mother’s mother, the parents clearly are not “there for” the children, either physically or mentally, to provide proper care and custody. This was an ongoing pattern for both, and neither one had any reasonable likelihood of changing permanently. The trial court did not clearly err in finding MCL 712A.19b(3)(g) proven by clear and convincing evidence. For similar reasons, it is almost axiomatic that functionally absent parents raise a significant specter of a child in their ostensible care being harmed; and when combined with the physical abuse discussed under MCL 712A.19b(3)(b)(i) and (ii), the trial court also did not clearly err in finding MCL 712A.19b(3)(j) proven by clear and convincing evidence.

The parents finally contend that the trial court erred in finding termination not clearly contrary to the children’s best interests. We disagree.

The trial court’s basis for finding termination not clearly against the best interests of the children was mostly that the instant matter reflected essentially the same situation that arose in 2003. The trial court observed that the parties clearly loved their children very much, but that they simply did not have what it took to keep their children safe and to provide their children with proper parents. The trial court noted again that mother’s problems with mental health and substance abuse were tragic, but they were debilitating and had been ongoing, chronic problems for a long time with every indication that they would continue. The trial court found the issue of father beating the children with a stick inappropriate, but only a small part of a much bigger picture of failing to provide useful care and protection for the children. The trial court concluded that the record clearly showed that the children were in danger living with the parents, and the likelihood that the parents would ultimately change their ways was poor.

The parties essentially argue on appeal that they had a genuine bond with the children and that their actions throughout this matter showed a capacity for meaningful change. However, as the trial court noted, the bond the parties had with their children was never in doubt.

The trial court deemed the parties' recent actions, which bore a striking similarity to the purely temporary gains they had shown three years previously, to be much poorer indicators of the future than their much more extensive histories. The parents' loving bonds with their children makes this a particularly sad case. However, given the extensive evidence of the parents' histories, the trial court did not clearly err in finding the children's best interests served by removing them from a harmful situation that was unlikely to change permanently.

Affirmed.

/s/ Alton T. Davis

/s/ Bill Schuette

/s/ Stephen L. Borrello